IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 7-8-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD No.463 of 2004

Coimbatore District Banian
Labours Progressive Union
Rep. By its Secretary
K.Ramakrishnan
Old Door No.279, New No.19,
Kumaran Road
Tiruppur. .. Petitioner

vs

1.Suguna Devi. R.
2.M.Senthamil Selvan .. Respondents

Civil revision petition preferred under Article 227 of the Constitution of India against the return order dated 5.3.2004 passed by the District Munsif, Tiruppur, in O.S.SR.No.1565 of 2004.

For Petitioner : Mr.M.Muthappan
For Respondents : Mr.Menon for R1
Mr.V.R.Ramesh for R2

ORDER

An order of the learned District Munsif, Tiruppur, returning a plaint in O.S.SR.No.1565 of 2004 for rectification of certain defects, is the subject matter of challenge in this revision petition at the instance of the plaintiff.

2.The Court heard the learned Counsel for the petitioner and also the respondents, who were shown as defendants in that plaint.

3.The revision petitioner namely Coimbatore District Banian Labours Progressive Union, represented by its Secretary, presented a plaint before the District Munsif's Court, Tiruppur, for a declaration that the decree made by the said Court in O.S.No.61 of 2004 in favour of the first respondent and against the second respondent is a collusive one, and it has to be declared as null and void, and for consequential reliefs. The said plaint was presented before that Court on 4.3.2004. The same was returned for the purpose of re-presentation along with the certified copy of the decree in O.S.No.61/2004. Instead of re-presenting the plaint along with the certified copy of the decree in O.S.No.61/2004, the plaintiff therein has brought forth this revision before this Court.

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4.In support of the revision petition, the learned Counsel for the petitioner would submit that the petitioner is a tenant in the suit property from 1989 onwards; that at that time, they made an advance of

Rs.25,000/-; that the second respondent herein has executed a letter to convey the property for a valuable consideration in May 2003 by getting Rs.50,000/-; that subsequently, the second respondent has sold the property to the first respondent on 4.12.2003 under a registered sale deed; that while the matter stood thus, the first respondent is attempting to demolish the property which was actually prevented by the plaintiff by filing a police complaint on 21.2.2004; that while so, O.S.No.61/2004 was filed by the first defendant against the second defendant on 23.2.2004 in which the second respondent herein appeared on 1.3.2004 and submitted to the decree, and thus, a collusive decree came to be passed in O.S.No.61/2004; that in that suit, there was a specific prayer for demolition of the existing building in which the petitioner herein continued to be in possession as a tenant; that the fact that the petitioner herein is a tenant in the said premises and also in possession of the property has been thoroughly suppressed in the said suit; that pursuant to the collusive decree, an attempt was made by the first respondent to demolish the property; that at that juncture, the instant suit was filed; but, the same has been returned by the lower Court stating that the certified copy of the decree in O.S.No.61/2004 has got to be filed, and at this juncture, the revision has been brought forth before this Court.

5.Added further the learned Counsel that from the facts, it would be quite clear that the said suit itself was a collusive one; that on the day when O.S.No.61/2004 was filed, that was on 23.2.2004, the second defendant namely the second respondent herein, who was shown as the sole defendant in that suit, had no iota of right at all; that the sole defendant therein also appeared before the Court within a short span of five days and also submitted to the decree; that all would clearly indicate the collusion between the parties; that this contention has been strengthened by the suppression of the fact that the petitioner is a tenant, and he is in possession; that it was only intended to demolish the property and thereby, to evict the petitioner herein, and under the circumstances, it was a collusive suit; that by playing fraud, a decree has been obtained, and hence, it has got to be set aside.

6.In support of his contention, the learned Counsel relied on two decisions of this Court reported in (i) 1998 (I) CTC 470 (J.SIVASUBRAMANIAN AND ANOTHER V. N.GOVINDARAJAN AND ANOTHER) and (ii) 2002 (I) CTC 277 (S.VISWANATHAN V. M/S.SRI MURUGA AGENCIES).

7.Contrary to the above contentions, the learned Counsel for the respondents would submit that in the instant case, this revision has been brought forth aggrieved over the order of return of a plaint; that there was a direction for the production of the certified copy of the decree in O.S.No.61/2004; that the plaintiff who is the revision petitioner herein, sought a declaration that the decree what was passed in O.S.No.61/2004, was collusive and fraudulent and would not be binding; that under the circumstances, certified copy of the decree in O.S.No.61/2004 should have been produced; that since it was not produced, the plaint was rightly returned; and that without producing a certified copy, now, the revision has been kept pending for a period of three years.

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8.Added further the learned Counsel that in the instant case, there was no collusion or fraud played, as put forth by the opposite party; that it is true that the petitioner was originally a tenant; that they have

actually vacated and handed over possession in 2002; that thereafter, in 2003, the property was actually purchased by the first respondent from the second respondent for a valuable consideration; that the first respondent was about to demolish the same for the purpose of reconstruction; that there was interference by the petitioner by lodging a police complaint and also filing a suit, the instant one; that the plaint has been returned; that now, at this juncture, they have brought forth the revision before this Court; that pending the revision, they got an interim stay that there should not be any interference by the respondents herein; that now, by taking advantage of the order of this Court, they got into the property as on today; that further, a contempt application has been filed by them stating that there was disobedience of the orders of this Court; that the said contempt application has also been dismissed by this Court; that now, there is neither collusion nor fraud in obtaining the decree; that O.S.No.61/2004 was only for permanent injunction to restrain the vendor of the property who is the second respondent herein, shown as defendant therein, and who was actually interfering with the possession; that under the circumstances, the relief of permanent injunction was asked for; that it has been granted, and hence, the revision has got to be dismissed.

9.The Court paid its anxious consideration on the rival submissions made.

10.This revision has been brought forth, as it is evident, only on an order of return of a plaint presented by the petitioner before the District Munsif's Court, Tiruppur. The suit was filed seeking a declaration that the decree passed in O.S.No.61/2004 by the first respondent against the second respondent was obtained fraudulently and collusively and for consequential reliefs. The plaint was returned for the production of the certified copy of the decree in O.S.No.61/2004, which, in the opinion of this Court, was rightly done by the Court below. The cause of action for the petitioner in filing the suit was actually the decree that was passed in O.S.No.61/2004, and hence, a certified copy of the decree should have been filed along with the plaint by the plaintiff, but not done. Under the circumstances, it was rightly returned for the production of the certified copy, and there cannot be any impediment for the revision petitioner in filing the certified copy of the decree in O.S.No.61/2004.

11.The second contention put forth by the petitioner's side that in O.S.No.61/2004, a decree was obtained collusively and fraudulently, and hence, it has got to be set aside, and this Court in exercise of its powers under Article 227 of the Constitution of India, can set aside the decree, in the opinion of this Court, cannot be countenanced in the instant case. It is true that the learned Counsel for the petitioner relied on a decision of this Court reported in 1998 (I) CTC 470 (J.SIVASUBRAMANIAN AND ANOTHER V. N.GOVINDARAJAN AND ANOTHER). A perusal of this decision would clearly reveal that in that case, both the respondents have thoroughly admitted the possession of the petitioners. But, in the case on hand, it is not so. According to the petitioner, he is a tenant under the second respondent in respect of the property, and there was a letter executed by the second respondent in favour of the petitioner by getting Rs.50,000/- in the month of May 2003 whereby it was agreed by the second respondent that he would sell the property for a consideration to be agreed upon by the parties. As far as that letter was concerned, whether it is true, genuine and acceptable and would be binding

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on the party is a question to be decided by the Court on appreciation of evidence.

12.Now, as regards the contention put forth by the petitioner's side that he is a tenant and continuing to be in possession of the property, the second respondent in the course of the counter in the contempt application has categorically stated that the petitioner vacated the premises in 2002; but, he has again got into the property, and thus, he is a trespasser. Now, whether the petitioner continues to be a tenant and whether he is in possession or not so are also matters to be canvassed before the lower Court and to be decided on that issue on evidence. Now, what are all brought to the notice of the Court was that a suit was filed in O.S.No.61/2004 on 23.2.2004 against the sole defendant, who is the second respondent herein and who also appeared before the Court on 1.3.2004, and he also submitted to the decree, and hence, the learned Counsel for the petitioner would submit that it was a collusive decree. Merely because of the fact that the defendant appeared before the Court shortly and submitted to the decree, it cannot be inferred that it was a collusive decree. But, the Court has to appraise of the circumstances attendant over the same. Now, the suit is actually filed, and the plaint has been returned for the rectification of certain defects. The learned Counsel for the petitioner would submit that he has already obtained the certified copy of the decree in O.S.No.61/2004. Under the circumstances, this Court is of the considered opinion that the petitioner can be permitted to re-present the plaint along with the certified copy of the decree in that suit within a period of four weeks herefrom. On doing so, the lower Court is directed to take the suit on file, if it is in order otherwise, and proceed with the matter in accordance with law.

13.Accordingly, this civil revision petition is disposed of. No costs.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1.The District Munsif
Tiruppur

2. The Record Keeper,
V.R.Section High court Madras.

+ 2 cc to Mr.Menon&Goklaney Advocate SR.NO.49114
+ 1 cc to Mr.Muthappan Advocate SR.NO.49076

JRG(CO)
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